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### RIGHT-OF-WAY AGREEMENT

This Right-of-Way Agreement ("Agreement") is entered into this 27th day of Sept., 1999 by and among River East, L.L.C. ("River East") and Kerr-McGee Chemical L.L.C. ("Kerr-McGee"), together referred to herein as the Obligors ("Obligors"), and the City of Chicago ("City"), as follows:

1. This Agreement is not binding on the City until it is executed by a duly authorized representative of the City. Prior to execution, this Agreement constitutes an offer by the Obligors. The duly authorized representatives of the Obligors have signed this Agreement, and this Agreement is binding upon them and their successors by merger or reorganization, upon execution by the City.
2. The Obligors stipulate:
  - a. The Site is located at 316 E. Illinois Street, Chicago, Illinois ("the Site"). The Site is and has been for multiple decades, used as an asphalt-paved parking lot. The Site is bounded by Grand Avenue, McClurg Court, Illinois Street and Columbus Drive.
  - b. On June 3, 1993, the United States Environmental Protection Agency ("USEPA") and the Illinois Department of Nuclear Safety ("IDNS") conducted a joint investigation at the Site and verified the presence of radioactivity below the asphalt surface of the Site at levels above natural background. USEPA determined that the use of the Site as a parking lot posed a negligible risk to the public.
  - c. A historical search determined that in the 1920s and 1930s a company known as the Lindsay Light Company leased the Site for the processing of thorium ores. Lindsay Light is a predecessor of Kerr-McGee. An ingredient in gas mantle manufacturing is thorium extracted from sand and formed into a solution into which mantels were dipped during the manufacturing process. It is believed that Section 11(e) (2) material, 42 U.S.C. §2014(e)(2) from this processing process is found at and around the Site ("Thorium Residuals").
  - d. On January 27, 1994, the Chicago Dock & Canal Trust ("Chicago Dock") (a predecessor to River East), entered into an Administrative Order by Consent ("AOC") with USEPA to investigate and study the extent of Thorium Residuals at

the Site. The study was completed in May, 1994. A final report concerning the extent of contamination was delivered to USEPA on October 17, 1995, and the study was approved by USEPA on March 13, 1996. The final report concluded, inter alia, that there were twelve subsurface areas at the Site which exhibited elevated gamma radiation levels. The AOC is Attachment B.

- e. On June 6, 1996, the USEPA issued a Unilateral Administrative Order ("UAO") to Chicago Dock and Kerr-McGee directing that a removal action be conducted at the Site pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9606(a). The UAO established criteria (the "Cleanup Criteria") for Thorium Residuals of 7.1 picoCuries per gram total radium – 5 picoCuries per gram total radium above background. The UAO is attached as Attachment C.
  - f. Pursuant to the UAO and with approval of USEPA, Chicago Dock and Kerr-McGee conducted and completed a removal action at the Site. This remediation took several months during CY1996 and 1997 and involved the removal and disposal of soils from the Site.
  - g. During the removal action, testing along Illinois Street and Columbus Drive revealed deposits of Thorium Residuals which could not be readily excavated. Information regarding the known location of this contamination was provided to the City during a meeting on June 26, 1997, and in subsequent correspondence dated July 14, 1997. Attachment D depicts the portions of Grand Avenue, Illinois Street, McClurg Court and Columbus Drive rights-of-way adjacent to the Site that are the subject of this Agreement ("designated rights-of-way"). The impacted areas of the designated rights-of-way adjacent to the Site where Thorium Residuals are known to be located ("impacted rights-of-way") are described on Attachment E. If subsequent sampling and analysis indicates the presence of contaminants associated with Thorium Residuals beneath the designated rights-of-way, then those areas shall be subject to and covered by this Agreement.
  - h. Attached as Attachment E is a site map showing the known areas of Thorium Residuals in the impacted rights-of-way, and the relative concentration of the Thorium Residuals governed by the UAO.
3. The City stipulates that it holds the designated rights-of-way adjacent to the Site in trust for the public and has jurisdiction over the designated rights-of-way.
4. The parties stipulate that:
- a. This Agreement is intended to meet the requirements of the United States Environmental Protection Agency regarding Thorium Residuals.
  - b. This Agreement shall run with the land constituting the designated rights-of-way and shall be recorded by the Obligor at their expense with the Cook County

Recorder of Deeds on the property described in Attachment D (the designated rights-of-way). Within thirty (30) days of such recording with the Cook County Recorder of Deeds, the Obligors shall provide the City a copy of the Agreement that has been stamped by the Cook County Recorder of Deeds to indicate that it has been recorded with that office. No filing or notice will be referenced against the Site.

- c. This Agreement shall be null and void should the United States Environmental Protection Agency not approve it.
5. The City agrees that it will limit access to soil as described herein under portions of the impacted rights-of way described in Attachment E and in any supplemental exhibits as provided in ¶2(g) that exceed USEPA Cleanup Criteria, as provided in Code Section 10-20-100, et.seq. subject to the following conditions:
- a. Where the pavement and sidewalk in the impacted rights-of-way are to be considered engineered barriers to gamma radiation emanating from Thorium Residuals, the Obligors agree to reimburse the City for maintenance activities requested by the Obligors. The City does not agree to maintain the designated rights-of-way, nor does it guarantee that the designated rights-of-way will continue as a roadway or sidewalk, or that the impacted rights-of-way will always be maintained as an engineered barrier.
  - b. This Agreement does not in any way limit the City's authority to construct, reconstruct, repair or maintain and operate the designated rights-of-way upon the property or other portions of the designated rights-of-way subsequently identified as containing contaminants associated with Thorium Residuals, or to allow others to use the designated rights-of-way. To that extent, the City reserves the right to identify, investigate, and remove soil contaminated with Thorium Residuals above the Cleanup Criteria from the impacted rights-of-way or from other portions of the designated rights-of-way adjacent to the Site subsequently identified as containing contaminants associated with Thorium Residuals and to dispose of them in accordance with applicable environmental regulations so as to avoid causing a further release of the contaminants and to protect human health and the environment. The Obligors shall reimburse the reasonable actual costs incurred by the City or its contractors or agents in so identifying, investigating, removing, storing, handling or disposing of soil contaminated with Thorium Residuals above the Cleanup Criteria, and it shall not be a defense for the Obligors that those costs were not consistent with or required by United States Environmental Protection Agency regulations, guidelines or policies. Prior to incurring any such costs, the City shall first give the Obligors thirty days notice, unless there is an urgent reason otherwise, to remove or dispose of soil contaminated with Thorium Residuals above the Cleanup Criteria to the extent necessary for the City's work. The City will cooperate with the Obligors in the conduct of the work including providing reasonable and appropriate access. USEPA shall also be forwarded a copy of this notice. Failure to give this

opportunity to the Obligor shall not be a defense to a claim for reimbursement or that the work should not have been done. If no such notice and opportunity are provided by the City to the Obligor and there was no urgent reason otherwise, the City's claim for reimbursement against the Obligor for such costs shall not exceed \$10,000.00. For the purpose of this Agreement only, there is a rebuttable presumption that Thorium Residuals found in the portions of the impacted rights-of-way or in other portions of the designated rights-of-way subsequently identified as containing contaminants associated with Thorium Residuals arose from the release of Thorium Residuals from the Site. Should the Obligor not reimburse the costs identified here, this Agreement shall be null and void in addition to such other remedies as may be available to the City.

6. The Obligor agrees to indemnify and hold harmless the City, its agents and employees, and contractors, for all obligations asserted against or costs incurred by them associated with the release of contaminants associated with Thorium Residuals in the impacted rights-of-way or in other portions of the designated rights-of-way subsequently identified as containing Thorium Residuals.
7. Violation of the terms of this Agreement by the Obligor, or their successor(s) in interest, may be grounds for voidance of this Agreement.
8. No violation of a permit by a third party shall constitute a breach of this Agreement by the City. The Obligor also agrees that their personnel, if any, at the Site will exercise due diligence in notifying those accessing contaminated soil in the impacted rights-of-way of their rights and responsibilities under this Agreement.
9. Should the City breach this Agreement, the Obligor's sole remedy is for an action for damages in the Circuit Court of Cook County. Any and all claims for damages against the City, its agents, contractors, employees or its successors in interest arising at any time are limited to an aggregate maximum of \$20,000.00. No other breach by the City, its agents, contractors, employees or its successors in interest of a provision of this Agreement is actionable in either law or equity by the Obligor against the City or them and the Obligor hereby releases the City, its agents, contractors, employees and its successors in interest for any cause of action it may have against them, other than as allowed in this paragraph, arising under this Agreement or environmental laws, regulations or common law governing contaminated soil in the designated rights-of-way. Should the City convey, vacate or transfer jurisdiction of the designated rights-of-way, the Obligor may pursue an action under this Agreement, not limited in amount, against the successors in interest, other than the City, or any of its departments, or State agency, in a Court of Law.
10. The City will limit access to the rights-of-way as follows:
  - a. Normal Access: The City will limit access to designated rights-of-way via the City Department of Transportation ("CDOT"), or its successor entity. Pursuant to §§10-20-100 and 10-20-150 of the Municipal Code of Chicago, a permit must be

issued by CDOT to any party, including the City, requesting to perform subsurface work in a City right-of-way. CDOT maintains and will maintain a permit database which, in conjunction with the City Department of Environment ("DOE"), tracks City rights-of-way with reported subsurface contamination. CDOT will consult the database whenever a party requests such a permit. The CDOT permit database will indicate the reported contamination under the impacted rights-of-way and it will indicate that radiation surveillance must be performed before and during excavations performed on other impacted rights-of-way subsequently identified as containing contaminants associated with Thorium Residuals through sampling and analysis. The permit database will also indicate that radiation surveillance must be performed during excavation or other work that disturbs or exposes the soil beneath the designated right-of-way. The CDOT database will direct the permit applicant to DOE to obtain detailed information on the nature and extent of the contamination and of the radiation surveillance requirements for any excavation near other impacted rights-of-way subsequently identified as containing contaminants associated with Thorium Residuals. After the permit applicant consults with DOE, the applicant must complete a form where the applicant acknowledges that it is aware of the contamination, will take appropriate steps to ensure the health and safety of people working in the impacted rights-of-way, and agrees to follow the health and safety plan for Thorium Residuals for these rights-of-way ("Health and Safety Plan"), attached as Attachment F, or other plan reviewed by USEPA that provides equal or greater health and safety protections, and to dispose of Thorium Residuals as required by law. DOE will provide written notice to River East, Kerr-McGee and USEPA at the time permit applicants contact DOE about the designated rights-of-ways and the radiation surveillance requirements.

- b. Emergency Access: The City Board of Underground ("BOU"), the City Department of Buildings, and the Chicago Fire Department, or their successor entities, will be notified of the contamination at the impacted rights-of-way and will be forwarded copies of all available environmental data regarding the impacted rights-of-way, including the Health and Safety Plan. BOU will provide this information to all utilities in the area. In the event of an emergency that occurs outside of CDOT business hours, this will enable utilities to provide their personnel with the appropriate information to ensure that proper health and safety precautions are taken.

- 11. The City will place and maintain placards in any underground access in the rights-of-way that state "Before Work, Contact Chicago Department of Transportation."

12. Notice for purposes of this Agreement should go to the following:

City of Chicago:  
Commissioner  
Department of Environment  
30 N. LaSalle Street  
25<sup>th</sup> Floor  
Chicago, IL 60602  
312/744-7606

River East LLC  
contact Kevin Augustyn  
Randy Grueb  
Charles Langenfeld  
455 East Illinois  
Suite 565  
Chicago, IL 60611  
Telephone: 312/321-8900  
Facsimile: 312/755-2750

and:

Vincent S. Oleszkiewicz  
counsel for River East LLC/MCL Companies  
Baker & McKenzie  
130 East Randolph Drive  
Chicago, IL 60601  
Telephone: 312/861-3737  
Facsimile: 312/861-2899

Kerr-McGee  
contact: Dan White  
Kerr-McGee Center  
Oklahoma City, OK 73125  
Telephone: 405/270-3792  
Facsimile: 405/270-3787

and:

Richard Meserve  
counsel for Kerr-McGee  
Covington & Burling  
1201 Pennsylvania Ave., N.W.

Washington, D.C. 20044  
Telephone: 202/662-5304  
Facsimile: 202/662-6291

U.S. EPA Region 5  
Lindsay Light II Site, Office of Regional Counsel  
contact: Mary Fulghum  
77 West Jackson Boulevard  
Chicago, IL 60604-3590  
Telephone: 312/886-4683  
Facsimile: 312/886-0747

13. Obligors, and any of their successor(s) by merger or reorganization pursuant to paragraph 1 of this Agreement, shall, at least 15 days prior to such subsequent merger or reorganization, give written notice and a copy of this Agreement to subsequent successor entity(ies), and provide written notice thereof to the City. The notice to the City shall include the name and address of the successor entity(ies).
14. If any provision of this Agreement is determined to exceed the authority of the City, or if any provision of this Agreement is declared null and void or unenforceable by any court or tribunal having jurisdiction, then this Agreement shall be null and void. If this Agreement is declared null and void, the information about the contamination will remain in the CDOT database and all permit applicants will be required to consult with DOE as described above. Similarly, the Emergency Access procedures described above will remain in force if the Agreement is declared null and void.
15. This Agreement shall continue in effect from the date of the Agreement until the Thorium Residuals in the soil are subsequently reduced through active remediation to levels approved by USEPA, such that unrestricted access to the impacted rights-of-way or other portions of the designated rights-of-way subsequently identified as containing contaminants associated with Thorium Residuals is demonstrated to be appropriate and there is no longer a need for this Agreement, and USEPA has, upon written request to the USEPA and notice to the City, provided a written determination authorizing unencumbered access to the impacted rights-of way.
16. Nothing in this Agreement shall be deemed to create any right or obligation in any person not a party hereto and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party nor an admission of any fact, condition or obligation by or for the benefit of any third party, nor shall any statement herein be considered an admission of fact for any purpose or use outside this Agreement. Nothing in this Agreement shall preclude the City, Kerr-McGee or River East from petitioning U.S. EPA for a relaxation of the Cleanup Criteria, if circumstances so warrant.

IN WITNESS WHEREOF, the City of Chicago caused this Agreement to be signed by its duly authorized representative:

BY: \_\_\_\_\_  
Commissioner  
Department of Environment  
City of Chicago

Date: \_\_\_\_\_

IN WITNESS WHEREOF, River East, L.L.C. has caused this Agreement to be signed by its duly authorized representative:

River East, L.L.C.  
By: River East, L.L.C.  
Its: Sole Member  
By: River East, L.L.C.  
Its: Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, Kerr McGee Chemical L.L.C. has caused this Agreement to be signed by its duly authorized representative:


BY: *George D. Christiansen*  
George D. Christiansen  
Vice President

Date: 09/24/99





IN WITNESS WHEREOF, the City of Chicago caused this Agreement to be signed by its duly authorized representative:

BY:   
Commissioner  
Department of Environment  
City of Chicago

Date: 9/24/99

IN WITNESS WHEREOF, River East, L.L.C. has caused this Agreement to be signed by its duly authorized representative:

River East, L.L.C.  
By: River East, L.L.C.  
Its: Sole Member  
By: River East, L.L.C.  
Its: Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, Kerr McGee Chemical L.L.C. has caused this Agreement to be signed by its duly authorized representative:

BY: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF OKLAHOMA    )  
                                  )     SS.  
COUNTY OF Oklahoma )

I, Carole A. Lunsford, a Notary Public in the aforesaid County, in the State aforesaid, do hereby certify that George D. Christiansen, Vice President of Kerr-McGee Chemical L.L.C., who is personally known to me to be the same person whose name is subscribed to the Right-of-Way Agreement entered into on September 27, 1999, by and among River East, L.L.C., Kerr-McGee Chemical L.L.C., and the City of Chicago, appeared before me this day in person, and acknowledged that on September 24, 1999, he signed, sealed and delivered the said Agreement as his own free and voluntary act and as the act of Kerr-McGee Chemical L.L.C. for the uses and purposes therein set forth.

Given under my hand and official seal, this 29 day of September, 1999.

Carole Lunsford  
Notary Public

Commission expires: 11/14/01

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF )

I, \_\_\_\_\_ a Notary Public in and for the said County, in the State aforesaid, do hereby certify that Daniel E. McLean, President of River East, Inc., which is the manager of River East, L.L.C., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, as such, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act and as the act of said corporation and limited liability company for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_\_ day of October, 1999.

Maria Bazianos  
Notary Public

Commission expires: June 23, 2001

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )



I, Jessie M. Stewart a Notary Public in and for the said County, in the State aforesaid, do hereby certify that William F. Black, Commissioner, department of the Environment of the City of Chicago, a municipal corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, as such, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act and as the act of said corporation and limited liability company for the uses and purposes therein set forth.

Given under my hand and official seal, this 8th day of September, 1999.

Jessie M. Stewart  
Notary Public

Commission expires: March 30, 2000

